



IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BRYAN J. PESTA,

) CASE NO. 1:23-CV-00546-DAP

Plaintiff,

JUDGE DAN AARON POLSTER

V.

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CLEVELAND STATE UNIVERSITY
BOARD OF TRUSTEES, in their official
capacities; LAURA BLOOMBERG, in
her individual and official capacity;
HARLAN M. SANDS, BENJAMIN
WARD, CHRISTOPHER MALLETT,
CONOR McLENNAN, and WENDY
REGOECZI, in their individual capacities,

) DEFENDANTS CLEVELAND STATE
) UNIVERSITY BOARD OF TRUSTEES,
) LAURA BLOOMBERG, HARLAN M. SANDS,
) BENJAMIN WARD, CHRISTOPHER
) MALLETT, CONOR McLENNAN, AND
) WENDY REGOECZI'S FIRST SET OF
) INTERROGATORIES TO PLAINTIFF

Defendants.

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INTERROGATORIES

Completed by Bryan J. Pesta

Interrogatory No. 1: *Identify each and every person with whom you have consulted, or whom you expect to call as an expert witness to testify on your behalf concerning the claims set forth in the Amended Complaint in this matter, and for each, what is the subject matter on which the expert is expected to testify?*

Answer:

(1) Objection. Pursuant to FRCP 26 (b)((4)(D) experts employed only for trial preparation are not discoverable. When Plaintiff has settled on trial experts, he will make disclosure in accordance with FRCP 26(a)(2)(B) and (C).

Interrogatory No. 2: Identify each and every person, other than experts, you anticipate calling as a witness to testify on your behalf concerning the claims set forth in the Amended Complaint this matter, and for each, what is the subject matter on which the witness is expected to testify?

Answer:

(1) All defendants, for claims raised in our amended complaint.

(2) Former Trustee member Steve Kirk, to illuminate personal, relevant conversations I had with him. These conversations regarded him talking with other CSU Trustee members about my case.

(3) Former Vice Provost Cheryl Bracken, regarding CSU's purported policy of not paying earned PTO to faculty who are fired versus retired. Alternatively, any current agent at CSU with the ability to testify on this point.

(4) Other witnesses as deemed necessary based on how discovery evolves.

Interrogatory No. 3: Identify each and every person, other than experts, who have knowledge of the facts alleged in your Amended Complaint, the damages allegedly suffered by you, and any of the efforts you made to mitigate such damages.

Answer:

The coauthors of the Lasker et al. paper (especially John Fuerst, as he was central to the investigation).

Interrogatory No. 4: Identify the date and describe the substance of each and every request for data you made to the National Institutes of Health to be used in "Global Ancestry and Cognitive Ability."

Answer:

<u>Project #</u>	<u>Applied</u>	<u>Renewed</u>	<u>Closed out</u>
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18007	4/12/18	n/a	6/25/19
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Substance: Sex differences in IQ, brain morphology, and brain volume.

19090	7/15/18	8/29/19	8/31/20
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Substance: Transethnic validity; race differences in mental health disorders including schizophrenia and low IQ.

19747	9/19/18	12/3/19	2/6/21
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Substance: Race differences in IQ (measured via educational attainment PGS) and schizophrenia.

Interrogatory No. 5: Identify each and every source of funding you obtained or requested to support your research on "Global Ancestry and Cognitive Ability."

Answer:

We received no funding to produce the Lasker et al. paper (nor did we apply for any). However, John Fuerst and I created a non-profit organization (The Human Phenome Diversity Foundation; HPDF). The HPDF's mission was to award research money to any qualified researchers

interested in studying race / IQ gaps. Its mission was also to further John Fuerst's education. As such, the HPDF financed a more powerful computer (needed to process NIH data), and various meals for John and me (plus his Uber rides to and from my house) as we worked on the projects.

Interrogatory No. 6: Identify each and every co-author, collaborator, research assistant, graduate assistant, or teaching assistant who assisted you in any way on the research, drafting, editing, or publication of "Global Ancestry and Cognitive Ability."

Answer:

I collaborated with just my coauthors—John Fuerst, Jordan Lasker, and Emil Kirkegaard.

Interrogatory No. 7: Describe each of the defenses you raised in response to the investigation and proceedings conducted by the National Institutes of Health based on your violation of the NIH's data-use policies.

Answer:

All defenses I've already raised for NIH's *alleged* violations appear in the "Final Report" PDF file that CSU sent me when they concluded their investigation.

Interrogatory No. 8: Describe each of the defenses you raised in response to the investigation and proceedings conducted by Cleveland State University that resulted in your termination from CSU.

Answer:

All defenses I've already raised appear in the "Final Report" PDF file that CSU sent me when they concluded their investigation.

Interrogatory No. 9: Identify each and every representative of the CSU AAUP whom you consulted during the investigation and proceedings conducted by Cleveland State University.

Answer:

Professor Birch Browning, Sonya Charles, and Don Allensworth-Davies.

Interrogatory No. 10: Identify the date and describe the substance of each and every request for IRB review and approval you made for your research on “Global Ancestry and Cognitive Ability,” and if you did not seek IRB approval, explain why you did not do so.

Answer:

IRB approval was not needed for the NIH TCP data. This fact was noted by the investigative committee itself as recorded in CSU’s “Final Report (p. 7)” PDF. Here is the table they (re)produced on Page 7 of the PDF:

Authorized Access

- Data access provided by: dbGaP Authorized Access
- Release Date: May 17, 2018
- Embargo Release Date: May 17, 2018
- Data Use Certification Requirements (DUC)
- Public Posting of Genomic Summary Results: Allowed
- Use Restrictions

Consent group	Is IRB required?	Data Access Committee	Number of participants
General Research Use (NPU)	No	Joint Addiction, Aging, and Mental Health DAC (JAAMH-DAC@list.nih.gov)	9496

Interrogatory No. 11: Identify the dates and describe the substance of each and every request for IRB review and approval you made for other research you did at CSU.

Answer:

Because I no longer have access to either (a) my CSU email account, or (b) the entire contents of my CSU office before I was terminated, I’m relying on just my memory here.

I do remember securing CSU IRB approval for these articles:

- *Image Theory and the Appraisal of Employee Performance: To Screen or Not to Screen* (2005).
- *Contrast and Rater-Perspective Effects on Judgments of Sexual Harassment Severity: What He Thinks She Thinks, and Vice Versa* (2007).
- *Black-White Differences on IQ and Grades: The Mediating Role of Elementary Cognitive Tasks* (2008).**
- *Sex Differences on Elementary Cognitive Tasks Despite no Differences on the Wonderlic Personnel Test* (2008).**
- *The inspection time and over-claiming tasks as predictors of MBA student performance* (2009). **
- *The Wonderlic Personnel Test and elementary cognitive tasks as predictors of religious sectarianism, scriptural acceptance, and religious questioning* (2009). **

Notes:

- (1) The four articles ending with “***” were all covered on a multi-study project I conducted around 2005 - 2006. I got IRB approval for the project, and my IRB application was entitled: “*Elementary Cognitive Tasks and Academic Performance.*”
- (2) No other study I’ve published since 2005 required IRB approval.
- (3) Before 2005, I know I got IRB approval for any other study that needed it, as I served on the CSU’s University IRB Committee in either the late 1990s or early 2000s.

Interrogatory No. 12: Identify each and every funding request made by your co-authors and collaborators to support research on “Global Ancestry and Cognitive Ability,” including the organization receiving the request, the date of the request, and the outcome of the request.

Answer:

I myself did not make any, nor am I aware of any funding requests made by either Fuerst, Lasker, or Kirkegaard regarding the Lasker et al. paper. Please also see my reply here to Interrogatory #5.

Interrogatory No. 13: Identify who maintained the data you requested from the National Institutes of Health for use in “Global Ancestry and Cognitive Ability” and describe how that data was maintained.

Answer:

As appears on Pages 168 and 195 of the “Instigative Binder” CSU used to allegedly justify my termination:

“Specifically, we plan to store the data on a desktop model hard drive. This will be kept in a locked cabinet at Bryan J. Pesta, the investigator’s home office. All analyses will be conducted on a desktop in the investigators home, following the protocols outlines (sic)...”

Interrogatory No. 14: Describe how you learned that President Sands received two letters from the Foundation for Individual Rights and Expression (FIRE), as alleged in the Amended Complaint.

Answer:

Katlyn Patton, a Staff Attorney at FIRE (<https://www.linkedin.com/in/katlyn-patton-90996368>) drafted these two letters on my behalf and sent them to Sands. Moreover, on 10/16/20, CSU's Office of General Counsel wrote back to Attorney Patton, and "cc'd" Sands. The letter starts by stating: "Your letter dated October 7, 2020, to Cleveland State University President Harlan Sands was directed to me for response..."

Interrogatory No. 15: Describe the factual basis supporting your allegation that the individual members of the Cleveland State University Board of Trustees monitored the investigation of you, as alleged in the Amended Complaint.

Answer:

Before I was terminated, I had three or more informal conversations with Former Trustee Member, Steve Kirk. It was obvious to me from these conversations that Trustee members were discussing my case.

Interrogatory No. 16: Describe the factual basis supporting your allegation that the Cleveland State University committee convened to investigate your role in "Global Ancestry and Cognitive Ability" also recommended your termination, as alleged in the Amended Complaint

Answer:

I was investigated by a CSU committee, and Provost Bloomberg used the committee's report to allegedly justify my termination. Both she and the committee shared a troubling pattern of ignoring the points I made in my defense. She could not have fired me without relying on the committee's report, as per CSU's policies on investigating "Academic Research Misconduct." And, in her termination letter to me, she regularly referenced the committee's report.

Interrogatory No. 17: Identify each person from whom you have obtained or solicited any written or recorded statement or affidavit relating to any of the facts or allegations set forth in your Amended Complaint.

Answer:

(1) Objection. Pursuant to FRCP 26 (b)(4)(D) experts employed only for trial preparation are not discoverable. When Plaintiff has settled on trial experts, he will make disclosure in accordance with FRCP 26(a)(2)(B) and (C). Aside from documentation covered with trial preparation experts, Plaintiff has no responsive documents at this time.

Interrogatory No. 18: State the name, case caption, date and venue of all other claims, lawsuits, administrative charges, complaints or settlement agreements filed by or against you, or that involve you in any way including those in which you provided any type of testimony.

Answer:

Objection. This demand as written goes considerably beyond the relevancy standard of FRCP 26(b) and would appear to sweep up matters wholly unrelated to Plaintiff's termination at CSU (such as his prior divorce).

Without waiving said objection, Plaintiff states that on 4/26/22 I filed an Unfair Labor Practice Charge with Ohio SERB: 2022-ULP-04-0045, Bryan J. Pesta v. American Association of University Professors - Cleveland State University Chapter. This would be the only other relevant matter falling under the category of "claims, lawsuits, administrative charges, complaints or settlement agreements."

Interrogatory No. 19: Describe the factual basis supporting your allegation that the Cleveland State University Board of Trustees approved your termination.

Answer:

Before I was terminated, I had three or more informal conversations with Former Trustee Member, Steve Kirk. It was obvious to me from these conversations that Trustee members were discussing my case. It was also obvious to me that the Trustees had some influence in deciding my fate.

Interrogatory No. 20: Describe the factual basis supporting your allegation that you had been intimidated to such an extent that you were willing to retract your research, as alleged in the Amended Complaint.

Answer:

See Page 32 of the "Final Report" PDF CSU used to allegedly justify my termination. The following is from the transcript therein of my first interview with the CSU committee (Zoom timestamps omitted; Zoom transcription errors retained):

Bryan: Some people outside of CSU, some inside CSU too, but some people outside of CSU – academics, postdocs - took offense to [the Lasker et al. paper] and complained.

Bryan: My understanding is a complaint, both to the NIH – well they did, they complained to the NIH and to CSU.

Bryan: But, as I say in the opening statement, I perceive it to be a fishing expedition and I suspect, like Bird and his colleagues [referring to complaint letter sent by Jedidiah

Carlson, Cathryn Townsend, Kevin Bird, and Os Keyes] their ultimate goal is to get the paper retracted.

Bryan: Which at this point is fine with me, although I think I can defend the actions that I took to produce it. So they complained, the NIH investigated...

Bryan: ... And I think that's why we're where we're at today. But in the May 21st - the May '21 email, they have a smaller set of allegations, so it seems like, you know, throwing stuff at the wall to see what sticks. That's what Bird did, and we're to the point where three [charges against me] are sticking.

See also page 42 of said "Final Report":

Mallett: What would you do different?[sic] What would you not have [done]?

Bryan: I wouldn't pursue this kind of research, it's just not worth it.

Interrogatory No. 21: What is the type and specific amount of damages you seek in this matter and for each damage amount what is the method of calculation you used to determine the amount?

Answer:

This answer will be supplemented at future date with our expert discovery response.

VERIFICATION OF INTERROGATORY ANSWERS

I, Bryan Pesta, am the Plaintiff herein. I believe, based on reasonable inquiry, that the foregoing answers are true and correct to the best of my knowledge, information, and belief.

I verify under penalty of perjury that the foregoing is true and correct.

Executed on January 12, 2024



Bryan Pesta

Dated: Goshen, New York
January 12, 2024

/s/ Frederick C Kelly
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